

# **EXHIBIT A**

1 KEKER & VAN NEST LLP  
2 ROBERT A. VAN NEST, #84065  
rvannest@kvn.com  
3 CHRISTA M. ANDERSON, #184325  
canderson@kvn.com  
4 DANIEL PURCELL, #191424  
dpurcell@kvn.com  
633 Battery Street  
5 San Francisco, CA 94111-1809  
Tel: 415.391.5400  
6 Fax: 415.397.7188

7 KING & SPALDING LLP  
SCOTT T. WEINGAERTNER  
*(Pro Hac Vice)*  
sweingaertner@kslaw.com  
9 ROBERT F. PERRY  
rperry@kslaw.com  
10 BRUCE W. BABER (*Pro Hac Vice*)  
1185 Avenue of the Americas  
11 New York, NY 10036  
Tel: 212.556.2100  
12 Fax: 212.556.2222

13 Attorneys for Defendant  
14 GOOGLE INC.

KING & SPALDING LLP  
DONALD F. ZIMMER, JR. - #112279  
fzimmer@kslaw.com  
CHERYL A. SABNIS - #224323  
csabnis@kslaw.com  
101 Second Street, Suite 2300  
San Francisco, CA 94105  
Tel: 415.318.1200  
Fax: 415.318.1300

IAN C. BALLON - #141819  
ballon@gtlaw.com  
HEATHER MEEKER - #172148  
meekerh@gtlaw.com  
GREENBERG TRAURIG, LLP  
1900 University Avenue  
East Palo Alto, CA 94303  
Tel: 650.328.8500  
Fax: 650.328-8508

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16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

19 ORACLE AMERICA, INC.,  
20 Plaintiff,  
21 v.  
22 GOOGLE INC.,  
23 Defendant.

Case No. 3:10-cv-03561-WHA

**DECLARATION OF ROBERT VAN  
NEST IN SUPPORT OF GOOGLE  
INC.'S OPPOSITION TO ORACLE  
AMERICA, INC.'S MOTION TO  
EXCLUDE EVIDENCE REGARDING  
LICENSE, IMPLIED LICENSE, AND  
EQUITABLE ESTOPPEL DEFENSES**

24 Dept.: Courtroom 8, 19<sup>th</sup> Floor  
25 Judge: Hon. William Alsup  
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DECLARATION OF ROBERT VAN NEST IN SUPPORT OF  
GOOGLE'S OPPOSITION TO MOTION TO STRIKE

Case No. 3:10-cv-03561-WHA

1 I, ROBERT VAN NEST, declare as follows:

2       1. I am a partner with the law firm of Keker & Van Nest LLP, counsel to Google  
 3 Inc. (“Google”) in the present case. I submit this declaration in support of Google’s Opposition  
 4 to Oracle America, Inc.’s (“Oracle”) Motion to Exclude Evidence Regarding License, Implied  
 5 License, and Equitable Estoppel Defenses (“Motion”). I have knowledge of the facts set forth  
 6 herein, and if called to testify as a witness thereto could do so competently under oath.

7       2. On April 15, 2012, starting at approximately 1:00 pm, Bruce Baber and I met and  
 8 conferred with Michael Jacobs, counsel for Oracle, by telephone regarding the parties’ opening  
 9 statement presentations, which we had exchanged the day before. Daniel Muino, counsel for  
 10 Oracle, may also have been in attendance for some or all of the call.

11      3. During our call, Mr. Jacobs stated that Oracle had “in the works” a motion in  
 12 limine attacking Google’s equitable defenses, and that Oracle “might” file the motion if Oracle  
 13 had the motion ready in time.

14      4. Mr. Jacobs did not identify which equitable defenses Oracle might attack or the  
 15 relief that Oracle would seek in the motion.

16      5. Mr. Jacobs did not identify the basis for any motion, other than referencing  
 17 Google’s interrogatory answers and objecting to Google’s inclusion in its opening presentation  
 18 of excerpts from an official Sun Microsystems blog authored by its then Chief Executive Officer,  
 19 Jonathan Schwartz (TX 2352). Among other things, that blog post congratulates Google on its  
 20 announcement of Android, and says that “Google and the Open Handset Alliance just strapped  
 21 another set of rockets to the [Java] community’s momentum.”

22      6. Oracle did not provide written notice, prior to 3:00 pm, of its intent to file its  
 23 Motion, as required by Paragraph 3 of Court’s Order Regarding Trial Procedures (Dkt. No. 890).

24      7. Shortly after 6:00 pm on April 15, 2012, I received notice via the Court’s ECF  
 25 system that Oracle filed its Motion. The notice states, “The following transaction was entered by  
 26 Jacobs, Michael on 4/15/2012 at 6:01 PM and filed on 4/15/2012.”

27      8. At 6:54 pm, Daniel Muino wrote to state Oracle’s belief that that my conversation

1 with Mr. Jacobs "suffices" as written notice in accordance with the Court's Order. A copy of  
2 Mr. Muino's email is attached to Google's opposition brief as Exhibit B.

3 I declare under penalty of perjury that the foregoing is true and correct and that this  
4 declaration was executed at San Francisco, California on April 15, 2012.

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6 By: /s/ Robert Van Nest  
7 ROBERT A. VAN NEST

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DECLARATION OF ROBERT VAN NEST IN SUPPORT OF  
GOOGLE'S OPPOSITION TO MOTION TO STRIKE

Case No. 3:10-cv-03561-WHA